

EXHIBIT H

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 -----X
5 TUFAMERICA, INC.,
6 Plaintiff,
12cv3529(AJN)
7 -against-
8 MICHAEL DIAMOND, ADAM HOROVITZ and
ADAM YAUCH, P/K/A BEASTIE BOYS,
9 UNIVERSAL MUSIC PUBLISHING, INC.,
UNIVERSAL MUSIC PUBLISHING GROUP,
10 BROOKLYN DUST MUSIC and CAPITAL
RECORDS, LLC,
11 Defendants.
12 -----X
13 30 Rockefeller Plaza
14 New York, New York
15 May 6, 2014
9:42 a.m.
16
17
18 VIDEOTAPE DEPOSITION of WILLIAM A.
19 SCOTT, the Witness in above-entitled
20 action, held at above time and place,
21 taken before Francine Sky, a Certified
22 Shorthand Reporter and Notary Public of
23 the State of New York, pursuant to the
24 Federal Rules of Civil Procedure, and
25 stipulations between Counsel.

1
2 APPEARANCES:
3
4 THE LAW OFFICES OF KELLY D. TALCOTT
5 Attorneys for Plaintiff
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8 Sea Cliff, New York 11579
9 BY: KELLY D. TALCOTT, ESQ.
10
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13 SHEPPARD MULLIN RICHTER & HAMPTON, LLP
14 Attorneys for Defendants
15 Michael Diamond, Adam
16 Horovitz, Adam Yauch, p/k/a
17 Beastie Boys
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20 BY: THOMAS M. MONAHAN, ESQ.
21 -and-
22 THEODORE C. MAX, ESQ.
23
24
25

1
2
3 APPEARANCES: (Continued)
4
5 JENNER & BLOCK, LLP
6 Attorneys for Defendants
7 UMG PolyGram International
8 Publishing, Inc. and Capitol
9 Records, LLC
10 919 Third Avenue
11 New York, New York 10022
12 BY: NATHANIEL H. BENFORADO, ESQ.
13
14
15
16
17
18 Also Present:
19
20 WAYNE SALINE, Videographer
21 Veritext New York
22 * * *
23
24
25

1
2 STIPULATIONS
3 IT IS HEREBY STIPULATED AND AGREED,
4 by and among counsel for the respective
5 parties hereto, that the filing,
6 sealing and certification of the within
7 deposition shall be and the same are
8 hereby waived;
9 IT IS FURTHER STIPULATED AND AGREED
10 that all objections, except as to form
11 of the question, shall be reserved to
12 the time of the trial;
13 IT IS FURTHER STIPULATED AND AGREED
14 that the within deposition may be
15 signed before any Notary Public with
16 the same force and effect as if signed
17 and sworn to before the Court.
18 * * *
19
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25

1 W. Scott
2 there weren't any errors in the 12:29PM
3 complaint? 12:29PM
4 A. It was really, it was just 12:29PM
5 reading through it for anything as 12:29PM
6 small as a typo. 12:29PM
7 Q. Did you look at any documents 12:29PM
8 to confirm that the allegations in the 12:29PM
9 complaint were true? 12:29PM
10 A. No. 12:30PM
11 Q. If you look at paragraph 13, 12:30PM
12 it says: 12:30PM
13 "TufAmerica is the exclusive 12:30PM
14 administrator and licensee of the 12:30PM
15 copyrights, composition and musical 12:30PM
16 recordings in and to among other 12:30PM
17 things, the recordings Say What," 12:30PM
18 and it lists a handful of other 12:30PM
19 recordings. It says Drop the Bomb. 12:30PM
20 Did you review any documents 12:30PM
21 to confirm that statement in paragraph 12:30PM
22 13. 12:30PM
23 A. No. Not at the time. 12:30PM
24 Q. If you look at the second 12:30PM
25 half of paragraph 17 -- I guess just 12:30PM

1 W. Scott
2 the whole paragraph 17: 12:30PM
3 "By way of an agreement dated 12:30PM
4 December 20, 1999 with Trouble 12:30PM
5 Funk's principals to control the 12:30PM
6 rights to the group's recordings 12:31PM
7 and compositions, TufAmerica became 12:31PM
8 the exclusive administrator and 12:31PM
9 copyright licensee of and to among 12:31PM
10 other recordings and compositions, 12:31PM
11 the sampled recordings." 12:31PM
12 Did you review any documents 12:31PM
13 to confirm that paragraph 17 was true? 12:31PM
14 A. No. 12:31PM
15 Q. Did anyone at TufAmerica 12:31PM
16 review any documents to confirm that 12:31PM
17 paragraph 17 was true? 12:31PM
18 A. I believe Mr. Talcott would 12:31PM
19 have. 12:31PM
20 Q. Would anyone else have 12:31PM
21 reviewed those documents to confirm 12:31PM
22 that paragraph 17 was true? 12:31PM
23 A. No. 12:32PM
24 Q. Based on your review of the 12:32PM
25 company's records, was any due 12:32PM

1 W. Scott
2 diligence performed by TufAmerica to 12:32PM
3 confirm that Trouble Funk's principals 12:32PM
4 owned and controlled the rights to the 12:32PM
5 group's recordings and compositions? 12:32PM
6 MR. TALCOTT: Objection. 12:32PM
7 A. I don't know. 12:32PM
8 Q. Again, you're here to testify 12:32PM
9 to the facts underlying the allegations 12:32PM
10 set forth in the complaint. 12:32PM
11 In your capacity to give that 12:33PM
12 testimony, and in your review of the 12:33PM
13 records to prepare for this deposition 12:33PM
14 and in discovery of this action, is 12:33PM
15 there any evidence that TufAmerica 12:33PM
16 conducted any due diligence with 12:33PM
17 respect to the statement that Trouble 12:33PM
18 Funk's principals controlled the rights 12:33PM
19 to the group's recordings and 12:33PM
20 compositions? 12:33PM
21 MR. TALCOTT: Objection. 12:33PM
22 A. I've been told that due 12:33PM
23 diligence was performed. 12:33PM
24 Q. Who told you that due 12:33PM
25 diligence was performed? 12:33PM

1 W. Scott
2 A. Aaron Fuchs. 12:33PM
3 Q. What due diligence did he say 12:33PM
4 was performed? 12:33PM
5 A. Just that research was done 12:34PM
6 at the time of the -- of this 1999 12:34PM
7 deal. 12:34PM
8 Q. Does TufAmerica have a record 12:34PM
9 as to the research and due diligence 12:34PM
10 that was performed as of the 1999 deal? 12:34PM
11 A. I don't -- I don't know. 12:34PM
12 Q. In connection with this 12:34PM
13 litigation, have you reviewed any due 12:34PM
14 diligence that was conducted in 12:34PM
15 connection with the 1999 deal? 12:34PM
16 A. I may have. Like there was a 12:35PM
17 lot of -- there were a lot of 12:35PM
18 documents. I don't remember. 12:35PM
19 Q. But in connection with your 12:35PM
20 deposition today, you reviewed no due 12:35PM
21 diligence with respect to the 1999 12:35PM
22 deal? 12:35PM
23 A. Correct. 12:35PM
24 MR. TALCOTT: Objection. 12:35PM
25 Q. When did you review the due 12:35PM

1 W. Scott
2 diligence documents in connection with 12:35PM
3 the 1999 deal? 12:35PM
4 MR. TALCOTT: Objection. 12:35PM
5 A. I'm not sure if I ever did. 12:35PM
6 If so, it would have been during that 12:36PM
7 discovery period. 12:36PM
8 Q. What documents did you review 12:36PM
9 in connection with the discovery 12:36PM
10 period, related to the due diligence 12:36PM
11 for the 1999 deal? 12:36PM
12 MR. TALCOTT: Objection. 12:36PM
13 A. I don't remember. 12:36PM
14 Q. As the person in charge of 12:36PM
15 the corporate books and records of 12:36PM
16 TufAmerica, and the witness designated 12:36PM
17 to testify regarding the allegations in 12:36PM
18 the complaint, what documents does 12:36PM
19 TufAmerica have related to the due 12:37PM
20 diligence done in connection with the 12:37PM
21 1999 deal? 12:37PM
22 MR. TALCOTT: Objection. 12:37PM
23 A. I don't know. 12:37PM
24 Q. In connection with 12:37PM
25 preparation for your deposition today, 12:37PM

1 W. Scott
2 did you endeavor to identify any 12:37PM
3 documents related to the due diligence 12:37PM
4 conducted with respect to the 1999 12:37PM
5 deal? 12:37PM
6 A. No. 12:37PM
7 MR. TALCOTT: Objection. 12:37PM
8 Q. Pursuant to the record 12:37PM
9 retention policy that TufAmerica 12:37PM
10 maintains -- strike that. 12:37PM
11 Where would you go to look 12:38PM
12 for the due diligence materials with 12:38PM
13 respect to the 1999 deal? 12:38PM
14 A. The filing system I 12:38PM
15 discussed, and then any e-mail accounts 12:38PM
16 of, I guess anyone, like attorneys 12:38PM
17 involved with the deal-making process. 12:38PM
18 RQ MR. MONAHAN: Kelly, we 12:38PM
19 would call for production of all 12:38PM
20 due diligence documents related to 12:38PM
21 the 1999 deal. 12:38PM
22 MR. TALCOTT: Noted. 12:39PM
23 Q. In connection with filing 12:39PM
24 this complaint, did anyone at 12:39PM
25 TufAmerica review the due diligence 12:39PM

1 W. Scott
2 with respect to the 1999 deal? 12:39PM
3 A. I don't know. 12:39PM
4 Q. Based on your review of the 12:39PM
5 books and records in preparation for 12:39PM
6 your deposition here today, did you 12:39PM
7 identify any evidence that the due 12:40PM
8 diligence materials were reviewed in 12:40PM
9 connection with the 1999 deal? 12:40PM
10 MR. TALCOTT: Objection. 12:40PM
11 A. I didn't review the due 12:40PM
12 diligence at all. 12:40PM
13 Q. I understand. Did your 12:40PM
14 review of the documents provide any 12:40PM
15 evidence to show that the due diligence 12:40PM
16 materials related to the 1999 deal were 12:40PM
17 reviewed in connection with the filing 12:40PM
18 of the complaint in this action? 12:40PM
19 MR. TALCOTT: Objection. 12:40PM
20 A. No. 12:40PM
21 Q. In your conversations with 12:41PM
22 Mr. Fuchs regarding what due diligence 12:41PM
23 had been conducted in connection with 12:41PM
24 the 1999 deal, what was the sum and 12:41PM
25 substance of those discussions? 12:41PM

1 W. Scott
2 A. That the attorney, I don't 12:41PM
3 know if he was in-house or outside 12:41PM
4 counsel, but he at the time of this 12:41PM
5 agreement, he did a great deal of due 12:41PM
6 diligence to make sure that these 12:41PM
7 titles were controlled by Trouble Funk. 12:41PM
8 Q. In connection with this 12:41PM
9 litigation were the attorneys -- did -- 12:41PM
10 strike that. 12:42PM
11 In connection with this 12:42PM
12 litigation, did TufAmerica obtain the 12:42PM
13 due diligence files of the attorney who 12:42PM
14 you just identified as the one that 12:42PM
15 performed the due diligence with 12:42PM
16 respect to the 1999 deal? 12:42PM
17 A. I'm not sure. 12:42PM
18 Q. Were you ever asked to obtain 12:42PM
19 those files? 12:42PM
20 MR. TALCOTT: Objection. 12:42PM
21 A. Not specifically, to my -- if 12:42PM
22 I can recall. 12:42PM
23 Q. Do you know the name of the 12:42PM
24 attorney that performed the due 12:42PM
25 diligence with respect to the 1999 12:42PM

1 W. Scott
2 deal? 12:43PM
3 A. I don't know the name. 12:43PM
4 MR. MONAHAN: Kelly, if you 12:43PM
5 can just leave a place, we would 12:43PM
6 ask the name of the attorney -- 12:43PM
7 MR. TALCOTT: Jeff Gandel. 12:43PM
8 MR. MONAHAN: Pardon? 12:43PM
9 MR. TALCOTT: Jeff Gandel. 12:43PM
10 THE COURT REPORTER: Can you 12:43PM
11 spell his last name for me. 12:43PM
12 THE WITNESS: G-A-N-D-E-L. 12:43PM
13 Q. Just a yes or no to this 12:43PM
14 question: Have you spoken to Mr. 12:43PM
15 Gandel with respect to this action? 12:43PM
16 A. No. 12:43PM
17 Q. Have you spoken with Mr. 12:43PM
18 Gandel with respect to the 1999 12:43PM
19 agreement and the due diligence in 12:43PM
20 connection with the 1999 agreement? 12:43PM
21 A. No. 12:43PM
22 Q. Have you ever spoken to Mr. 12:43PM
23 Gandel? 12:43PM
24 A. No. 12:43PM
25 Q. Is it your testimony that the 12:44PM

1 W. Scott
2 due diligence conducted in connection 12:44PM
3 with the 1999 deal was extensive? 12:44PM
4 MR. TALCOTT: Objection. 12:44PM
5 A. I don't know. 12:44PM
6 Q. Based on your review of the 12:44PM
7 records, what is your understanding of 12:44PM
8 the substance of the due diligence 12:44PM
9 materials that were exchanged with 12:44PM
10 respect to the 1999 deal? 12:44PM
11 MR. TALCOTT: Objection. 12:44PM
12 A. I don't know that I 12:45PM
13 personally reviewed the due diligence. 12:45PM
14 Q. What documents have you 12:45PM
15 reviewed related to the 1999 deal? 12:45PM
16 A. The 1999 deal itself. I 12:45PM
17 believe there were two. That's all. 12:45PM
18 (Tuf Exhibit 3, marked for 12:46PM
19 identification.) 12:47PM
20 Q. Mr. Scott, I've placed before 12:47PM
21 you what has been marked as Tuf Exhibit 12:47PM
22 3. It's the December 6, 2012 amended 12:47PM
23 complaint in this action. 12:47PM
24 Have you seen this document 12:47PM
25 before? 12:47PM

1 W. Scott
2 A. Yes. 12:47PM
3 Q. Again, did you review this 12:47PM
4 document before it was filed? 12:47PM
5 A. Yes. I think so. Yes. 12:47PM
6 Q. In connection with that 12:48PM
7 review, did you review any other 12:48PM
8 documents? 12:48PM
9 A. Not that I remember. 12:48PM
10 Q. Did you review any due 12:48PM
11 diligence materials in connection with 12:48PM
12 the 1999 agreement, at the time you 12:48PM
13 conducted your review of this 12:48PM
14 document -- 12:48PM
15 A. No. 12:48PM
16 Q. -- Tuf 3? 12:48PM
17 A. No, I didn't. 12:48PM
18 Q. If you'll look at paragraph 12:48PM
19 27, which is on page 6. 12:48PM
20 It says: "After listening to 12:49PM
21 Shadrach at the point at which the 12:49PM
22 Say What sample is used by 12:49PM
23 Defendants, TufAmerica was able to 12:49PM
24 determine that Shadrach 12:49PM
25 incorporates the Say What sample." 12:49PM

1 W. Scott
2 Do you have an understanding 12:49PM
3 as to why the description of the quote, 12:49PM
4 "careful audio analysis" that was 12:49PM
5 discussed in the initial complaint is 12:49PM
6 omitted from this amended complaint? 12:49PM
7 A. No. 12:49PM
8 Q. Did you suggest that that 12:49PM
9 description be removed from this 12:50PM
10 amended complaint? 12:50PM
11 A. I don't believe so, no. 12:50PM
12 Q. If you'll turn to paragraph 12:50PM
13 75. The caption describes -- addresses 12:50PM
14 an unauthorized use of Let's Get Small 12:50PM
15 in the song Hold it Now, Hit It. 12:50PM
16 Do you have any understanding 12:50PM
17 as to why this claim was now included 12:50PM
18 in the amended complaint? 12:50PM
19 MR. TALCOTT: Objection. 12:50PM
20 A. Because it's an unauthorized 12:51PM
21 sample of a Trouble Funk song. 12:51PM
22 Q. Do you have any understanding 12:51PM
23 as to why this claim was not included 12:51PM
24 in the first complaint? 12:51PM
25 A. I don't. 12:51PM

1 W. Scott
 2 either through making demand letters or 02:01PM
 3 ultimately bringing a lawsuit? 02:01PM
 4 MR. TALCOTT: Objection. 02:01PM
 5 A. With respect to them being 02:01PM
 6 identified? There are many -- I feel 02:01PM
 7 like there's many ways they can be 02:01PM
 8 identified. There's no process there. 02:01PM
 9 And then with respect to the 02:01PM
 10 second half of the question -- were you 02:01PM
 11 asking if there was a procedure, let's 02:01PM
 12 say once something is identified? 02:01PM
 13 Q. Let's start with the 02:01PM
 14 identification. You mentioned there 02:01PM
 15 are a number of ways they can be 02:01PM
 16 identified. 02:01PM
 17 A. Yes. 02:02PM
 18 Q. What are the ways that they 02:02PM
 19 can be identified? 02:02PM
 20 A. Someone could be walking 02:02PM
 21 through a drug store and overhear 02:02PM
 22 something playing on the radio, and 02:02PM
 23 realize that it's some kind of either 02:02PM
 24 an infringement or something of that 02:02PM
 25 nature. 02:02PM

1 W. Scott
 2 Someone could tell us, I 02:02PM
 3 guess. 02:02PM
 4 It could be discovered 02:02PM
 5 through just day-to-day research of the 02:02PM
 6 copyrights themselves just doing 02:02PM
 7 research on our catalog. 02:03PM
 8 Q. Are TufAmerica employees ever 02:03PM
 9 asked in the course of their duties to 02:03PM
 10 review albums or other popular music in 02:03PM
 11 an effort to identify potential 02:03PM
 12 infringements? 02:03PM
 13 A. Not in a -- not in a general 02:03PM
 14 -- not in any general way or any way 02:03PM
 15 that doesn't have any prior knowledge 02:03PM
 16 of a certain record maybe having an 02:03PM
 17 infringement on it. It's not, there's 02:03PM
 18 no blanket policy of listening through 02:03PM
 19 everything you can to try and find 02:03PM
 20 stuff. 02:03PM
 21 Q. And now after a potential 02:04PM
 22 infringement is identified, is there a 02:04PM
 23 process for proceeding with that 02:04PM
 24 potential infringement and a potential 02:04PM
 25 claim related to that potential 02:04PM

1 W. Scott
 2 infringement? 02:04PM
 3 A. Yeah. Sometimes just 02:04PM
 4 consulting agreements to make sure 02:04PM
 5 rights are -- that we have rights to 02:04PM
 6 the song that is being infringed upon. 02:04PM
 7 Finding the owner of the song which 02:04PM
 8 infringes on the Tuff City copyright or 02:04PM
 9 something. And then reaching out to 02:04PM
 10 that owner, whether it be through a 02:04PM
 11 cease and desist letter or just a 02:04PM
 12 general inquiry or e-mail about the 02:05PM
 13 matter. I think that is the process. 02:05PM
 14 Q. Who at TufAmerica is 02:05PM
 15 responsible for overseeing that 02:05PM
 16 process? 02:05PM
 17 A. Usually any -- if there's any 02:05PM
 18 legal counsel or Aaron Fuchs oversees 02:05PM
 19 it. 02:05PM
 20 Q. What portion of TufAmerica's 02:05PM
 21 business is related to identifying and 02:05PM
 22 pursuing these claims? 02:05PM
 23 MR. TALCOTT: Objection. 02:05PM
 24 A. I don't know the amount of 02:05PM
 25 its business. I don't know how to 02:06PM

1 W. Scott
 2 quantify that. 02:06PM
 3 Q. Based on your day-to-day 02:06PM
 4 responsibilities, what portion of your 02:06PM
 5 day-to-day work is focused on 02:06PM
 6 identifying and pursuing active or 02:06PM
 7 potential infringement claims? 02:06PM
 8 MR. TALCOTT: Objection. 02:06PM
 9 A. If we can separate the 02:06PM
 10 identifying and pursuing, that would 02:06PM
 11 maybe make me be able to give a better 02:06PM
 12 answer. 02:06PM
 13 Q. That's fine. 02:06PM
 14 A. Very little time is spent on 02:06PM
 15 identifying samples. It's not a 02:06PM
 16 priority really. 02:06PM
 17 But once they are identified, 02:06PM
 18 we spend a little bit of time every day 02:06PM
 19 or every few days on I guess pursuing 02:06PM
 20 these things. But it's not a 02:06PM
 21 consistent workload of that though. It 02:07PM
 22 ebbs and flows. 02:07PM
 23 Q. Do you have any knowledge as 02:07PM
 24 to the portion of revenue that 02:07PM
 25 TufAmerica generates from its pursuit 02:07PM

1 W. Scott
2 of potential or active copyright 02:07PM
3 infringement claims? 02:07PM
4 A. Could you repeat the 02:07PM
5 question. 02:07PM
6 [The requested portion of the 02:07PM
7 record was read back by the 02:07PM
8 reporter.] 02:08PM
9 A. There's not much money made 02:08PM
10 on the pursuit or the active pursuit of 02:08PM
11 a copyright claim. 02:08PM
12 Q. Do you have any knowledge as 02:08PM
13 to what percent of TufAmerica's 02:08PM
14 revenues are represented by recoveries 02:08PM
15 related to the prosecution of these 02:08PM
16 infringement claims? 02:08PM
17 A. I'm not sure of the 02:08PM
18 percentage, but it's a -- I don't know 02:08PM
19 a dollar figure. I haven't seen -- I 02:08PM
20 haven't seen, you know, an accounting 02:08PM
21 of how much that represents. I don't 02:08PM
22 know. 02:09PM
23 Q. Would you say it's more than 02:09PM
24 half? 02:09PM
25 MR. TALCOTT: Objection. 02:09PM

1 W. Scott
2 A. I don't know. 02:09PM
3 Q. Are you generally privy to 02:09PM
4 the company's revenue numbers and other 02:09PM
5 financial numbers? 02:09PM
6 A. Generally, yes. 02:09PM
7 Q. Would you consider recovery 02:09PM
8 through infringement actions to be a 02:09PM
9 significant portion of TufAmerica and 02:09PM
10 Tuff City's business? 02:09PM
11 MR. TALCOTT: Objection. 02:09PM
12 A. It's -- it is significant. 02:09PM
13 Q. Can you look back at Tuf 8. 02:10PM
14 It states in paragraph 1: 02:10PM
15 "The term of this agreement 02:10PM
16 is two years commencing January 1, 02:10PM
17 2012." 02:10PM
18 To your knowledge has this 02:10PM
19 agreement been renewed? 02:10PM
20 A. Not to my knowledge. 02:10PM
21 Q. In your review of the records 02:10PM
22 in preparation for this action -- I'm 02:11PM
23 sorry, in preparation for this 02:11PM
24 deposition and in connection with 02:11PM
25 discovery in this action, have you seen 02:11PM

1 W. Scott
2 any renewal or other document to 02:11PM
3 supplement this agreement? 02:11PM
4 A. Not that I can remember. 02:11PM
5 Q. In you look at paragraph 12. 02:11PM
6 It states: "Avery warrants 02:11PM
7 and represents, that (1) Avery owns 02:11PM
8 or controls the Trouble Funk 02:11PM
9 copyrights. 02:11PM
10 "(2) Avery has the right to 02:11PM
11 grant the rights granted herein. 02:11PM
12 "(3) Avery has the right to 02:11PM
13 enter into this agreement and; 02:11PM
14 "(4) Avery is not previously 02:11PM
15 granted any of the rights granted 02:11PM
16 herein to any other person or 02:11PM
17 entity." 02:11PM
18 Was any due diligence 02:12PM
19 performed in connection with this 02:12PM
20 agreement regarding the Representations 02:12PM
21 and Warranties contained in paragraph 02:12PM
22 12? 02:12PM
23 A. I believe so. 02:12PM
24 Q. What due diligence was 02:12PM
25 performed in connection with the 02:12PM

1 W. Scott
2 Representations and Warranties 02:12PM
3 contained in paragraph 12? 02:12PM
4 A. I think it was known that he 02:12PM
5 was a partial owner of some of the 02:12PM
6 copyrights. 02:12PM
7 I don't know the exact due 02:12PM
8 diligence that was done, though, for 02:12PM
9 the formulation of that paragraph. 02:12PM
10 Q. What is your basis for your 02:12PM
11 belief that due diligence was performed 02:12PM
12 in connection with the Representations 02:12PM
13 and Warranties outlined in paragraph 02:13PM
14 12? 02:13PM
15 A. Paragraph 9 sort of indicates 02:13PM
16 to me that there was some due diligence 02:13PM
17 done that would indicate that some due 02:13PM
18 diligence was done with respect to 02:13PM
19 understanding Jim Avery's ownership of 02:13PM
20 the copyrights. But when it comes to 02:13PM
21 12, I don't know. I don't have any 02:13PM
22 direct knowledge that due diligence was 02:14PM
23 done there. 02:14PM
24 Q. What indirect knowledge do 02:14PM
25 you have? 02:14PM

1 W. Scott
 2 Have you seen this document 03:48PM
 3 before today? 03:48PM
 4 A. No. 03:48PM
 5 Q. Did you play any role in the 03:48PM
 6 negotiation of the license in this 03:48PM
 7 document? 03:48PM
 8 A. No. 03:48PM
 9 Q. Other than the licenses that 03:48PM
 10 we've just gone through, has TufAmerica 03:48PM
 11 entered into any other licenses on 03:49PM
 12 behalf of Trouble Funk? 03:49PM
 13 A. I think so. 03:49PM
 14 Q. What licenses, other than 03:49PM
 15 those that we've just gone through, are 03:49PM
 16 you thinking of? 03:49PM
 17 A. One would be the, that State 03:49PM
 18 Property, Criminal Background sample 03:49PM
 19 use license. 03:49PM
 20 There are no others that are 03:49PM
 21 immediately coming to mind. But I 03:49PM
 22 think there have been some. 03:49PM
 23 MR. MONAHAN: If I can just 03:50PM
 24 have a moment. This may be it. 03:50PM
 25 THE VIDEOGRAPHER: We're 03:50PM

1 W. Scott
 2 going off the record. The time is 03:50PM
 3 3:49. 03:50PM
 4 (Whereupon, a short recess 03:50PM
 5 was taken.) 03:54PM
 6 THE VIDEOGRAPHER: We're 03:54PM
 7 going back on the record. The time 03:55PM
 8 is 3:54. 03:55PM
 9 EXAMINATION BY 03:55PM
 10 MR. BENFORADO: 03:55PM
 11 Q. Good afternoon, Mr. Scott. 03:55PM
 12 As I said earlier my name is Mr. 03:55PM
 13 Benforado. I represent -- my law firm 03:55PM
 14 represents UMG PolyGram and Capitol 03:55PM
 15 Records in this action. I just have a 03:55PM
 16 few questions. I shouldn't take more 03:55PM
 17 than a few minutes. 03:55PM
 18 Earlier this morning when you 03:55PM
 19 were being questioned by Mr. Monahan 03:55PM
 20 you testified that you were aware that 03:55PM
 21 the members of Trouble Funk had an 03:55PM
 22 agreement with Island; is that correct? 03:55PM
 23 A. That's correct. 03:55PM
 24 Q. Is it fair to say that your 03:55PM
 25 understanding of that agreement is that 03:55PM

1 W. Scott
 2 certain Trouble Funk recordings are 03:56PM
 3 owned by Island Records? 03:56PM
 4 MR. TALCOTT: Objection. 03:56PM
 5 A. I don't really have a very 03:56PM
 6 good understanding of that agreement. 03:56PM
 7 Q. You testified that you did 03:56PM
 8 review an agreement with Island; is 03:56PM
 9 that right? 03:56PM
 10 A. I reviewed it, yes. 03:56PM
 11 Q. Do you remember who the 03:56PM
 12 parties were to that agreement? 03:56PM
 13 A. I recall that Trouble Funk, 03:56PM
 14 Max Kidd and Island. But I don't know 03:56PM
 15 if they were all in one agreement or 03:56PM
 16 multiple agreements. Those are rather 03:56PM
 17 twisty. 03:56PM
 18 Q. So you don't recall which 03:56PM
 19 specific agreement it was you had 03:56PM
 20 reviewed? 03:56PM
 21 A. Not exactly, no. 03:56PM
 22 Q. And just referencing the 03:56PM
 23 Administration Agreements between 03:56PM
 24 TufAmerica and the members of Trouble 03:56PM
 25 Funk that we reviewed earlier, it's 03:57PM

1 W. Scott
 2 fair to say that in those agreements it 03:57PM
 3 references the Trouble Funk members 03:57PM
 4 agreement with Island; is that fair? 03:57PM
 5 MR. TALCOTT: Objection. 03:57PM
 6 A. It references Island. 03:57PM
 7 Q. It references Island. And if 03:57PM
 8 we want to pull out Tuf 4 and Tuf 5 of 03:57PM
 9 the two agreements. On the second 03:57PM
 10 page. 03:57PM
 11 A. Yes. It references an 03:57PM
 12 agreement with Island. 03:57PM
 13 Q. Now you see where it says 03:57PM
 14 "Insert name of album" in parenthesis 03:57PM
 15 after Island? 03:57PM
 16 A. Yes. 03:57PM
 17 Q. Are you aware of any attempt 03:57PM
 18 from TufAmerica to obtain the names of 03:57PM
 19 the albums that were released by 03:57PM
 20 Island? 03:58PM
 21 A. I don't think I would have 03:58PM
 22 been aware in 1999. 03:58PM
 23 Q. Did you ever check Schedule A 03:58PM
 24 in these agreements, Tuf 4 and Tuf 5, 03:58PM
 25 the Administration Agreements, did you 03:58PM

1 W. Scott
 2 ever check Schedule A to see if any of 03:58PM
 3 those songs listed were released by 03:58PM
 4 Island Records? 03:58PM
 5 A. I believe I have. 03:58PM
 6 Q. When did you do that? 03:58PM
 7 A. In the last two or three 03:58PM
 8 weeks. 03:58PM
 9 Q. And was that in connection 03:58PM
 10 with this litigation? 03:58PM
 11 A. It was. 03:58PM
 12 Q. And what did you -- what did 03:58PM
 13 you do? 03:58PM
 14 A. I looked to see if Island had 03:58PM
 15 released any of these songs. 03:58PM
 16 Q. And what was the outcome of 03:58PM
 17 your search? 03:58PM
 18 A. And just to clarify, it was 03:58PM
 19 specifically with respect to Say What 03:58PM
 20 and Let's Get Small. 03:58PM
 21 Q. Fair enough. What was the 03:58PM
 22 result of the search for Let's Get 03:59PM
 23 Small and Say What? 03:59PM
 24 A. I remember seeing that Island 03:59PM
 25 had released a live album titled "Say 03:59PM

1 W. Scott
 2 What" that did not contain Say What. 03:59PM
 3 I also remember seeing -- I 03:59PM
 4 think that Island released a version of 03:59PM
 5 Let's Get Small. 03:59PM
 6 Q. And after you saw that Island 03:59PM
 7 had released a version of Let's Get 03:59PM
 8 Small, did you do anything after that? 03:59PM
 9 MR. TALCOTT: Objection. 04:00PM
 10 A. I did. 04:00PM
 11 Q. What did you do? 04:00PM
 12 A. With respect to the knowledge 04:00PM
 13 or -- 04:00PM
 14 Q. Well, once you saw that 04:00PM
 15 Island had released a version of Let's 04:00PM
 16 Get Small, did you perform any 04:00PM
 17 follow-up, did you communicate with 04:00PM
 18 anyone involved in the litigation? 04:00PM
 19 A. I believe I -- I think I 04:00PM
 20 communicated with Mr. Talcott. 04:00PM
 21 Possibly Mr. Fuchs. I don't remember 04:00PM
 22 clearly though. 04:00PM
 23 Q. Did you attempt to listen to 04:00PM
 24 the version of Let's Get Small, the 04:00PM
 25 Island version of Let's Get Small? 04:00PM

1 W. Scott
 2 A. I did. I did. 04:00PM
 3 Q. And were you able to actually 04:00PM
 4 listen to it? 04:00PM
 5 A. I think I was, yeah. I think 04:01PM
 6 I did. 04:01PM
 7 Q. How did you obtain the 04:01PM
 8 recording? 04:01PM
 9 A. I think that Tuff City has a 04:01PM
 10 digital copy of the recording. 04:01PM
 11 Q. And to be clear you're 04:01PM
 12 talking about the Island recording? 04:01PM
 13 A. Correct. 04:01PM
 14 Q. And you said it's a digital 04:01PM
 15 copy? 04:01PM
 16 A. Yes. 04:01PM
 17 Q. You also testified that you 04:01PM
 18 reviewed the complaint before it was 04:01PM
 19 filed in this action; is that right? 04:01PM
 20 A. Yes. 04:01PM
 21 Q. When you reviewed the 04:02PM
 22 complaint, did you ever check the 04:02PM
 23 tracks at issue in the complaint to see 04:02PM
 24 if Island had released any of those 04:02PM
 25 tracks? 04:02PM

1 W. Scott
 2 A. Not that I remember. 04:02PM
 3 Q. Did anyone ask you to? 04:02PM
 4 A. Not that I remember. 04:02PM
 5 Q. Are you aware of anyone else 04:02PM
 6 at TufAmerica or Tuff City who checked 04:02PM
 7 those tracks to see if they had been 04:02PM
 8 released by Island? 04:02PM
 9 A. This was in 2012? 04:02PM
 10 Q. The first one was filed in 04:02PM
 11 2012, I believe. 04:02PM
 12 A. I don't know that anyone else 04:02PM
 13 did. 04:02PM
 14 Q. And you also talked about 04:02PM
 15 your belief that Jeff Gandel performed 04:03PM
 16 due diligence when the agreements were 04:03PM
 17 originally signed in 1999; is that 04:03PM
 18 right? 04:03PM
 19 A. Correct. 04:03PM
 20 Q. Do you have any knowledge of 04:03PM
 21 whether he checked to see if any of the 04:03PM
 22 songs listed in Schedule A were 04:03PM
 23 released by Island Records? 04:03PM
 24 A. I have no knowledge of that. 04:03PM
 25 Q. You also mentioned the track 04:03PM

1 W. Scott
2 Don't Touch That Stereo in connection 04:03PM
3 with a potential infringing use during 04:03PM
4 the Super Bowl; is that right? 04:03PM
5 A. Yes. 04:03PM
6 Q. And before you also testified 04:03PM
7 that TufAmerica has reached out to some 04:03PM
8 of the parties involved in that 04:03PM
9 performance, potential performance of 04:03PM
10 that track. 04:03PM
11 Are you aware of anyone at 04:03PM
12 TufAmerica or Tuff City checking to see 04:03PM
13 if that track had been released by 04:03PM
14 Island? 04:03PM
15 A. I would have done that. 04:03PM
16 Q. Did you do that? 04:03PM
17 A. I think so. 04:04PM
18 Q. What was the result of your 04:04PM
19 checking? 04:04PM
20 A. I can't remember. 04:04PM
21 Q. How would you go about -- if 04:04PM
22 I were to ask you right now whether a 04:04PM
23 certain track was released by Island, 04:04PM
24 how would you perform that analysis? 04:04PM
25 A. I would search the Internet, 04:04PM

1 W. Scott
2 probably discogs.com, that's a database 04:04PM
3 of record releases. If that wasn't 04:04PM
4 complete, which I think it is for this 04:04PM
5 stuff, I would do searches for you know 04:04PM
6 the original albums or the song title 04:04PM
7 to just try to put together as good a 04:04PM
8 picture as possible as to where it was 04:04PM
9 released and what ways. 04:04PM
10 Q. Are you aware of anyone other 04:05PM
11 than you who would perform a similar 04:05PM
12 analysis to check if songs were 04:05PM
13 released by Island Records? 04:05PM
14 MR. TALCOTT: Objection. 04:05PM
15 A. I guess other people could do 04:05PM
16 that. 04:05PM
17 Q. Would it fall under anyone 04:05PM
18 else's job responsibility? 04:05PM
19 A. I would say possibly Mr. 04:05PM
20 Talcott. Possibly -- that would be the 04:05PM
21 only other person. 04:05PM
22 Q. And you don't have any 04:05PM
23 specific knowledge of another person 04:05PM
24 who actually did perform searches to 04:05PM
25 see if Island had released any of the 04:06PM

1 W. Scott
2 Trouble Funk songs? 04:06PM
3 A. Any of the Trouble Funk 04:06PM
4 songs? 04:06PM
5 Q. We can start with Let's Get 04:06PM
6 Small and Say What, are you aware of 04:06PM
7 any specific person who has done a 04:06PM
8 search to see if Island had released 04:06PM
9 those songs, other than yourself? 04:06PM
10 A. I believe Mr. Talcott has as 04:06PM
11 well. 04:06PM
12 Q. Anyone other than Mr. Talcott 04:06PM
13 and yourself? 04:06PM
14 A. Not that I know of. 04:06PM
15 Q. With respect to all of the 04:06PM
16 songs in Schedule A, are you aware of 04:06PM
17 anyone other than yourself who has 04:06PM
18 searched to see if those were also 04:06PM
19 released by Island Records? 04:06PM
20 A. Other than Mr. Talcott, I'm 04:06PM
21 not aware of anyone. 04:06PM
22 Q. Who at TufAmerica was 04:07PM
23 responsible for making a determination 04:07PM
24 as to whether Island had released any 04:07PM
25 of the songs at issue in the amended 04:07PM

1 W. Scott
2 complaint? 04:07PM
3 MR. TALCOTT: Objection. 04:07PM
4 A. I don't know. Mr. Talcott 04:07PM
5 and myself. 04:07PM
6 Q. Would Mr. Fuchs have also 04:07PM
7 been involved in that determination? 04:07PM
8 A. I don't know if he was or 04:08PM
9 not. 04:08PM
10 Q. You just don't know one way 04:08PM
11 or the other? 04:08PM
12 A. I don't know about this. 04:08PM
13 Q. Do you have a recollection of 04:08PM
14 when the determination, that 04:08PM
15 determination we just discussed of 04:08PM
16 whether Island had released any of the 04:08PM
17 tracks at issue in the complaint, when 04:08PM
18 was that analysis performed by you 04:08PM
19 and/or Mr. Talcott? 04:08PM
20 MR. TALCOTT: Objection. 04:08PM
21 A. I don't know. 04:08PM
22 Q. But it was before filing the 04:08PM
23 complaint? 04:08PM
24 A. I don't recall researching 04:08PM
25 those tracks prior to filing the 04:08PM

1 W. Scott
 2 complaint, the amended complaint. I 04:08PM
 3 don't know if Mr. Talcott did or not. 04:08PM
 4 Q. So you're not aware -- you do 04:08PM
 5 not recall researching whether Island 04:09PM
 6 had released any of the tracks in the 04:09PM
 7 amended complaint prior to filing? 04:09PM
 8 A. I don't recall. 04:09PM
 9 Q. You don't recall? 04:09PM
 10 A. Researching it myself. 04:09PM
 11 Q. Do you recall anyone else 04:09PM
 12 doing that research? 04:09PM
 13 A. I don't recall. 04:09PM
 14 Q. I believe you testified that 04:09PM
 15 you have done that research. When was 04:09PM
 16 that research done? Was that done in 04:09PM
 17 the last two to three weeks; is that 04:09PM
 18 right? 04:09PM
 19 A. That definitely within the 04:09PM
 20 last two to three weeks. Aside from 04:09PM
 21 that though I don't -- other than being 04:09PM
 22 generally aware that Trouble Funk had 04:09PM
 23 released things on Island, I didn't 04:09PM
 24 know specifics of what was released. 04:09PM
 25 Q. So the first time you kind of 04:09PM

1 W. Scott
 2 dove into that research was within the 04:10PM
 3 last two to three weeks? 04:10PM
 4 A. Me personally, yes. 04:10PM
 5 Q. Are you aware of anyone else 04:10PM
 6 doing that research before the last two 04:10PM
 7 to three weeks? 04:10PM
 8 A. No. I'm not -- I mean I 04:10PM
 9 don't recall anyone else doing it. 04:10PM
 10 MR. BENFORADO: I don't think 04:10PM
 11 I have any further questions. 04:10PM
 12 THE VIDEOGRAPHER: This marks 04:10PM
 13 the end of tape No. 5 in the 04:10PM
 14 videotape deposition of Will Scott. 04:10PM
 15 We're going off the record. The 04:10PM
 16 time is 4:09. 04:10PM
 17 (Time noted: 4:09 p.m.)
 18
 19
 20
 21
 22
 23
 24
 25

1
 2 STATE OF NEW YORK)
 : ss.
 3 COUNTY OF _____)
 4
 5
 6 I, WILLIAM A. SCOTT, the
 7 witness herein, having read the
 8 foregoing testimony of the pages of
 9 this deposition, do hereby certify it
 10 to be a true and correct transcript,
 11 subject to corrections, if any, shown
 12 on the attached page.
 13
 14
 15
 16
 17
 18
 19 Sworn and Subscribed
 this ____ day of ____, 2014.
 20
 21
 22

 WILLIAM A. SCOTT

 Notary Public

1
 2 C E R T I F I C A T E
 3
 4 STATE OF NEW YORK)
 : ss.
 5
 6 COUNTY OF NEW YORK)
 7
 8 I, FRANCINE SKY, a Certified
 9 Shorthand Reporter and Notary Public
 10 within and for the State of New York,
 11 do hereby certify:
 12 That WILLIAM A. SCOTT, the
 13 witness whose deposition is
 14 hereinbefore set forth, was sworn and
 15 of the testimony given by such witness.
 16 I further certify that I am
 17 not related to any of the parties
 18 to this action by blood or marriage;
 19 and that I am in no way interested in
 20 the outcome of this matter.
 21 IN WITNESS WHEREOF, I have
 22 hereunto set my hand this 8th day
 23 of May, 2014.
 24

 FRANCINE SKY